

Appendix 10A: Legislation and Planning Policy

APPENDIX 10A – LEGISLATION AND PLANNING POLICY

Table 10A.1 Summary of relevant legislation

Statute	Relevant legal requirements
<p>The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations)</p>	<p>The Habitats Regulations require the compilation and maintenance of a register of European sites, to include Special Area Conservation (SACs) and Special Protection Areas (SPAs) classified under Council Directive 79/409/EEC on the Conservation of Wild Birds (the Birds Directive). When considering potentially damaging operations, the precautionary principle applies i.e. consent for the operations cannot be given unless it is demonstrated that there will be no adverse effect on the integrity of the European site.</p> <p>Affords protection to European Protected Species, e.g. bats and great crested newt, listed in Schedule 2. It is an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in listed animals. In certain circumstances, licences can be granted to permit some actions prohibited under the Habitats Regulations.</p> <p>Regulation 9A requires that competent authorities must take such steps in the exercise of their functions as they consider appropriate to secure the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds ... as appropriate, and having regard to the requirements of Article 2 of the Birds Directive. This includes the use of planning and development control measures (Defra and Welsh Government, 2016, see also Table 10A.2).</p>
<p>Wildlife and Countryside Act 1981 (as amended) (WCA)</p>	<p>Part 1 of the WCA affords general protection to all species of wild bird, and specific protection to flora and fauna listed in Schedules 1 (birds protected by special penalties), 5 (other animals), and 8 (flora, fungi and lichens). It is an offence (subject to exceptions) to:</p> <ul style="list-style-type: none"> • kill, injure, or take any wild bird; • take, damage or destroy the nest of any wild bird while that nest is in use or being built; • take or destroy an egg of any wild bird; • disturb any wild bird listed on Schedule 1 of the WCA while nesting, or disturb the dependent young of such a bird (e.g. quail); • kill, injure or take any wild animal listed on Schedule 5 (e.g. bats, great crested newt, common lizard); • damage, destroy or obstruct places used for shelter or protection by wild animals listed on Schedule 5 and covered by Part 4A of the WCA (e.g. bats and great crested newt); • intentionally disturb wild animals listed in Schedule 5, and covered by Part 4A of the WCA, that are occupying places of shelter and protection (e.g. bats and great crested newt); and

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	<ul style="list-style-type: none"> pick, uproot or destroy any plant, fungi or lichen listed in Schedule 8. <p>In certain circumstances, licences can be granted to permit some actions prohibited under the WCA.</p> <p>Schedule 9 provides lists of non-native flora and fauna that it is an offence to release or cause to spread in the wild. Of primary relevance in the context of proposed developments are flora e.g. invasive non-native plant species.</p> <p>Part 2 of the WCA details the law regarding SSSIs and other protected areas within Great Britain.</p>
Countryside & Rights of Way Act 2000 (CRoW)	<p>Schedule 9 of the CRoW amends SSSI provisions of the Wildlife and Countryside Act 1981, including increased powers for their protection and management of SSSIs. These strengthened provisions extend powers for entering into management agreements; place a duty on public bodies to further the conservation and enhancement of SSSIs; increases penalties on conviction where the provisions are breached; and introduce a new offence whereby third parties can be convicted for damaging SSSIs.</p> <p>Schedule 12 of the CRoW amends the species provisions of the WCA, strengthening the legal protection for threatened species. The provisions make certain offences 'arrestable', and created a new offence of reckless disturbance.</p>
Natural Environment and Rural Communities Act 2006 (NERC)	<p>The NERC places a duty on Government Departments and public authorities to have regard for the conservation of biodiversity. Section 41 includes a list of habitats and species to be used by decision-makers, including local authorities, to guide the implementation of their duties under section 40 of the NERC to have regard to the conservation of biodiversity in England, when carrying out their normal functions.</p>
Protection of Badgers Act 1992	<p>Makes it an offence to kill or take a badger, to cruelly ill-treat a badger, or to interfere with a badger sett, including disturbing a badger while it is occupying a sett. In certain circumstances, licences can be granted to permit some actions prohibited under the Act.</p>
The Hedgerow Regulations 1997	<p>Does not apply to acts of hedgerow removal covered by the process for granting planning permission. However, it retains value as part of the process for determining the relative value of specific hedgerows/ hedgerow networks and requirements for appropriate mitigation.</p>
Salmon & Freshwater Fisheries Act 1975	<p>This Act contains provisions relating to:</p> <ul style="list-style-type: none"> prohibition of certain methods for taking or destroying fish; obstructions to the passage of fish in watercourses.

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The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003	<p>The Water Framework Directive (WFD; EC Directive 2000/60/EC) came into force in 2000 and is the most substantial piece of EU water legislation to date. At the heart of the WFD is the philosophy to “make waterbodies better” through sustainable development for the joint benefits of aquatic habitats and the human environment.</p> <p>The WFD requires members states achieve “good status” for all groundwater and surface waters (rivers, lakes, transitional waters, and coastal waters). For surface water, overall status comprises two elements: "good ecological status" and "good chemical status". Ecological status is defined by the biological condition or health of a watercourse, in combination with water quality and physical conditions that underpin biological conditions. The classification of ecological status considers biological elements (the abundance of aquatic flora and fauna), physical habitat availability (hydromorphology), and water quality factors such as the availability of nutrients, salinity, temperature and pollution by key chemical pollutants. The biological elements used as indicators of ecological quality include fish, macroinvertebrates, macrophytes and diatoms.</p> <p>Any proposed developments or activities that have the potential to affect the water environment require a WFD Assessment (WFDa). Compliance with the WFD means attainment of good ecological status, prevention of deterioration in status, and prevention of failure to achieve future attainment of good status where it is not already achieved within waterbodies. However, WFD Article 4.7 provides legislation for exemption conditions that could allow implementation of schemes that cause deterioration in ecological status, for example for reasons of overriding public interest.</p> <p>The WFD was transposed into UK law through the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003, which require the Secretary of State and the Environment Agency to exercise their relevant functions so as to secure compliance with the requirements of the WFD.</p>
Animal Welfare Act 2006	The Act contains the general laws relating to animal welfare. It is an offence to cause unnecessary suffering to any animal. The Act makes owners and keepers (including landowners) responsible for ensuring that the welfare of animals within their control is met.
The Eels (England & Wales) Regulations 2009	Includes provisions relating to the installation and maintenance of eel screens.
The Aquatic Animal Health (England and Wales) Regulations 2009	<p>Covers the capture and movement of fish, including legal responsibilities relating to:</p> <ul style="list-style-type: none"> actions to catch, transport and keep the fish until they can be

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	rehomed; <ul style="list-style-type: none"> • identifying appropriate receptor sites for the fish; • consenting of fish movement; • requirements for checks of fish health prior to their movement and rehoming.

Table 10A.2: Summary of relevant national and local planning policy and associated guidance

Document	Relevant policies	Purpose
National Planning Policy Framework (NPPF)	Section 11	The NPPF states the commitment of the UK Government to minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity. It specifies the obligations that the Local Authorities and the UK Government have regarding statutory designated sites and protected species under UK and international legislation and how this it to be delivered in the planning system. Protected or notable habitats and species can be a material consideration in planning decisions and may therefore make some sites unsuitable for particular types of development, or if development is permitted, mitigation measures may be required to avoid or minimise impacts on certain habitats and species, or where impact is unavoidable, compensation may be required.
Overarching National Policy Statement (NPS) for Energy (EN-1)	Part 5.3: Biodiversity and geological conservation	The NPS sets out national policy for energy infrastructure. Where the development is subject to EIA the applicant should ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. Requires that the applicant shows how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.
Natural England and Defra Standing Advice	Protected sites and species	Guidance has been published covering protected sites, habitats and species. This includes guidance on providing and protecting wild bird habitats to address legal requirements set out in the Habitats Regulations. The purpose of standing advice is to guide decision-

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		<p>makers on the determination of proposals with potential to affect protected sites, habitats and species. The guidance sets out responsibilities and minimum requirements for survey and mitigation, including the need to consider objectives for no net loss and provision of net gain. Where impacts cannot be avoided, then planning applications should be determined with regard to ensuring:</p> <ul style="list-style-type: none"> • no more habitat is lost than is replaced (no net loss); • as a minimum like-for-like habitat replacements; • consideration of options to secure better alternative habitat in terms of quality or area, compared to what will be lost.
<p>Selby District Core Strategy Local Plan (adopted in 2013)</p>	<p>SP18: Protecting and enhancing the environment</p>	<p>The high quality and local distinctiveness of the natural environment will be sustained by:</p> <ol style="list-style-type: none"> 1) Safeguarding and, where possible, enhancing the natural environment. 2) Promoting effective stewardship of the District’s wildlife by: a) safeguarding nature conservation designations, including SINCs, from inappropriate development; b) ensuring developments retain, protect and enhance features of biological and geological interest and provide appropriate management of these features and that unavoidable impacts are appropriately mitigated and compensated for, on or off-site; c) ensuring development seeks to produce a net gain in biodiversity by designing-in wildlife and retaining the natural interest of a site where appropriate; and d) supporting the identification, mapping, creation and restoration of habitats that contribute to habitat targets in the National and Regional biodiversity strategies and the local Biodiversity Action Plan. 3) Wherever possible improving the network of linked open spaces and green corridors and promoting opportunities to increase its multi-functionality. This will be informed by the Leeds City Region Green Infrastructure Strategy. 4) Encouraging incorporation of positive biodiversity actions, as defined in the local Biodiversity Action Plan, at the design stage of new developments or land uses. 5) Ensuring that new development protects soil, air and water quality from all types of pollution. 6) Steering development to areas of least environmental

Document	Relevant policies	Purpose
		quality.
Selby District Local Plan (adopted in 2005) , saved policies	ENV3: Light pollution	To minimise the impacts of external lighting used in new development by only permitting proposals where lighting schemes: 1) Represent the minimum level required for security and/or operational purposes; 2) Are designed to minimise glare and spillage; 3) Would not create conditions prejudicial to highway safety or which would have a significant adverse effect on local amenity; and 4) Would not detract significantly from the character of a rural area. Proposals for development involving outdoor lighting should incorporate details of lighting schemes as part of applications for development.
	ENV9: SINCS	Proposals for development which would harm a local nature reserve, a site of local importance for nature conservation or a regionally important geological/geomorphological site, will not be permitted unless there are no reasonable alternative means of meeting the development need and it can be demonstrated that there are reasons for the proposal which outweigh the need to safeguard the intrinsic local nature conservation value of the site or feature.
	ENV11: Ancient woodland	Development will not be permitted where it is likely to cause loss of, or damage to, an ancient woodland, unless the reasons for the development outweigh the nature conservation value of the woodland.
	ENV12: River and stream corridors	Proposals for development likely to harm the natural features of or access to river, stream and canal corridors will not be permitted unless the importance of the development outweighs these interests, and adequate compensatory measures are provided.
	ENV13: Development affecting ponds	Proposals for development which would harm the landscape, townscape, historical or wildlife value of a pond will not be permitted unless: 1) The need for a particular development outweighs the particular value of the pond; 2) An equivalent habitat can be created on site or elsewhere in the locality which will provide the same landscape, townscape or wildlife value of the existing pond; and 3) Appropriate management measures are incorporated in the scheme.
Selby Biodiversity	-	Provides the local nature conservation strategy for

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Action Plan (published 2004)		identifying threats to habitats and species within the district and setting out the actions necessary to conserve them. Although now somewhat out of date, the Selby BAP provides context to inform identification of threatened/ uncommon habitats and species within the district. The BAP identifies priorities for conservation and enhancement but confers no particular legislative or policy protection to the habitats and species identified (but in some cases this is provided through related legislation and policy). See Table 10A.3 for a review of potentially relevant Selby BAP habitats and species.

Table 10A.3: Screening of Selby BAP habitats and species for relevance to the Proposed Development

Habitat or Species Action Plan	Relevant / Potentially Relevant to Proposed Development?	Comments
Habitat Action Plans		
Woodland	✓	Blocks of plantation woodland are present around the existing coal-fired power station.
Lowland wood pasture and parkland	×	Not present
Ancient and/or species-rich hedgerows	×	Hedgerows present are not ancient or species-rich.
Arable farmland	✓	Proposed Gas Connection and Proposed Cooling Water Connections cross arable farmland north of the existing coal-fired power station.
Grazing marsh	×	Not present
Unimproved grassland	×	Not present
Lowland heathland	×	Not present
Fens	×	Not present
Reedbed	×	Not present
Lakes and Ponds	✓	A water storage reservoir (lagoon) within the existing coal-fired power station will be removed, though this does not meet priority habitat criteria.
Canal	×	Not present
Rivers, streams and	✓	River Aire and two wet ditches (Ings and Tetherings

Habitat or Species Action Plan	Relevant / Potentially Relevant to Proposed Development?	Comments
ditches		Drain and Hensall Dyke) will be affected by construction works associated with the Proposed Gas Connection, Proposed Cooling Water Connections and Proposed Surface Water Drainage Connection.
Towns and villages	✓	Ephemeral/ short perennial habitat around the coal stockyards within existing coal-fired power station represents 'brownfield habitat' that is included within this habitat action plan.
Species Action Plans		
Otter	✓	Signs of activity found along Ings and Tethering Drain. The River Aire and Hensall Dyke also provide potentially suitable habitat.
Water vole	✓	River Aire, Ings and Tethering Drain and Hensall Dyke provide potentially suitable habitat.
Great crested newt	✓	Presence confirmed through eDNA sampling in the northern part of the Study Area near Selby Canal.
Tansy beetle	×	No suitable habitat present in the Study Area for this species.
Dingy skipper	×	No suitable habitat present in the Study Area for this species.
Pillwort	×	No suitable habitat present in the Study Area for this species.
Cylindrical whorl snail	×	No suitable habitat present in the Study Area for this species.
Aquatic beetle <i>Agabus uliginosus</i>	×	No suitable habitat present in the Study Area for this species.
Bats	✓	Bats recorded foraging in association with habitats around the existing coal-fired power station.
Bumblebees	×	Habitats present in Study Area unlikely to be of high value to bumblebees
Clearwing moths	×	Habitats present in Study Area unlikely to be of high value to clearwing moths.
Rare moths	×	Habitats present are unlikely to be of high value to rare moths.